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STATUTES

California Penal Code, Sec. 1239 1

IN THE

Supreme Court of the United States

October Term, 1947
No. 351, Misc.

ARTHUR R. EGGERS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

RESPONDENT'S OPPOSING BRIEF.

Statement of Case.

Petitioner was accused by indictment of the murder of Dorothy Eggers, to which he pleaded not guilty and not guilty by reason of insanity. He was found guilty by a jury of murder of the first degree without recommendation under his plea of not guilty, following which a different jury found him sane under his plea of not guilty by reason of insanity. The trial court imposed the death penalty. By virtue of Section 1239 of the Penal Cole of California the judgment was automatically reviewed by the Supreme Court of California, which affirmed said judgment. (*People v. Eggers,* 30 A. C. 681, 185 P. (2d) 1.) Later, petitioner filed with said Supreme Court a petition for a writ of habeas corpus, which was denied without opinion. A review of the order denying said petition is now requested of this Honorable Court on the

grounds that a purported confession was illegally obtained and used against petitioner at his trial and that he was denied the right of counsel during the investigation of the crime. The facts of the case are as follows:

Statement of Facts.

On the morning of January 2, 1946 two men saw a body lying at the bottom of a ravine adjacent to the high gear road above Arrowhead Springs Hotel in San Bernardino County. [Rep. Tr. pp. 12, 13, 19.] Sheriff Shay and his deputies retrieved the body, which was that of a woman wrapped in a cotton blanket tied with rope. The body was nude and without head and hands. [Rep. Tr. pp. 21, 22.] A thorough search for the head and hands was made but they were not found. [Rep. Tr. pp. 37, 38.] On each foot there was a prominent bunion. [Rep. Tr. pp. 33, 34.] The head had been removed from the torso on a level with the shoulders, and the hands removed at the union with the forearms. The hands had been hacked off and a saw might have been used in removing the head, in the opinion of the autopsy surgeon. [Rep. Tr. pp. 270, 271.] There were some abrasions on the body and two bullet wounds in the torso, one was 2½ inches from the top of the shoulder and the other had penetrated the chest anterior to the heart. [Rep. Tr. p. 272.] One bullet had penetrated the lung completely and was lying loose in the chest cavity. The other bullet had penetrated the heart which was a fatal wound. [Rep. Tr. pp. 273, 274.] The torso bullet slugs were removed from the body and marked People's Exhibits 25 and 26 for identification. [Rep. Tr. p. 275.] There were powder burns about ⅛ of an inch wide around the wounds, and deposits of powder granules went in about ⅛ of an inch.

[Rep. Tr. pp. 300, 303.] The woman appeared to be about 40 years of age. [Rep. Tr. p. 301.]

On January 2nd, in the afternoon just before going to work, defendant read in the newspaper about the finding of a body and he testified this caused him to make a missing person report, because he didn't know whether his wife was dead or alive. [Rep. Tr. p. 889.] He worked as a secretary at the Temple substation of the Sheriff's Office of Los Angeles County. [Rep. Tr. p. 122.] In the month of December, 1945 his hours of work were from 5:00 p. m. to 1:00 a. m. [Rep. Tr. p. 127.] The missing person report given by defendant was dated January 2, 1946. It named Dorothy Lee Eggers, address 202 North Rosemead, Temple, as the missing person, and defendant, at the same address, as the informant. The time of disappearance was stated as December 30, 1945. It described her as a female white American, 41 years of age, five feet four inches in height and 132 pounds in weight, dark brown hair, dark blue eyes, with no marks or scars. [Rep. Tr. p. 138.]

On January 3rd, at about 7:00 p. m., defendant appeared at the Sheriff's Office in San Bernardino and introduced himself as a deputy sheriff of Los Angeles County and said he would like to view the body there, that it might be his wife, and asked if they had received a bulletin on it and was told that they had not. Defendant was asked to describe his wife and he stated that she was five feet two, weighing about 145 pounds, and had brown hair. Defendant was told that the body, which was then at the Cramer Mortuary located about two miles from the Sheriff's Office, could not be that of his wife because the body was 58 inches from her shoulders to the ball of her feet. Defendant said something to the effect,

"Maybe that isn't so, then." [Rep. Tr. pp. 106-108.] Witnesses at the trial gave Mrs. Eggers' height as five feet six to five feet eight inches. [Rep. Tr. pp. 152, 164, 407, 742, 745, 746.]

Living at the home of defendant were two nieces of his wife, Lorraine Howard, eleven years of age, in the 5th grade at school, and Marie Elizabeth Eggers, eighteen years of age, who worked at the Business Extension Bureau. [Rep. Tr. pp. 247, 249, 456.] Marie last saw her aunt, Mrs. Eggers, on December 28th at about 7:17 a. m. when she (Marie) left the home to go to work, at which time Mrs. Eggers fixed breakfast for her; that when she returned home from work at about 6:00 or 6:30 o'clock that evening she did not see Mrs. Eggers but saw Mr. Eggers, and that she has not seen her aunt alive since 7:00 or 7:30 o'clock in the morning of December 28th. [Rep. Tr. pp. 457, 458.] Lorraine last saw her aunt, Mrs. Eggers, at around noontime when she helped her hang up clothes. This was some day between December 25, 1945 and January 1, 1946. [Rep. Tr. pp. 249-251.] After helping Mrs. Eggers hang up the clothes, Lorraine went to the home of a girl friend to show her a music book. When she returned home the defendant was reading a paper and she asked him where Mrs. Eggers was and he told her that Mrs. Eggers had gone to the store. [Rep. Tr. pp. 251, 259, 261, 262, 263.] Leslie Loomis, a roomer and boarder at the Eggers home, stated that he last saw Mrs. Eggers on December 28, 1945, when he went to work at 7:00 a. m., that when he returned at 5:00 o'clock that evening, she was not at home, but that defendant was home and told him that Mrs. Eggers had gone away and he did not know where she was. [Rep. Tr. pp. 208-211.] The records of the Sheriff's

Office show that defendant was off duty on the night of December 28th. [Rep. Tr. pp. 408, 409.]

Marie stated that defendant was a pretty good father to her, except when it came to financial things; he was kind of tight with his money. [Rep. Tr. pp. 468, 469.] A next door neighbor stated that she has heard quarreling in the Eggers family two or three times a week and on one occasion Mrs. Eggers came around the house from the front to where Mr. Eggers was hoeing in back of the house and in a loud voice called him a damn insect and cheap skate and that Mr. Eggers turned around and said, "That is enough. That is enough, now." [Rep. Tr. pp. 746-749.] Defendant testified that Mrs. Eggers never did forgive him for not giving Leslie Loomis (the roomer and boarder) a Christmas present after she told him to and he said "All right," but never did give him a present. [Rep. Tr. p. 890.]

Leslie Loomis first met Mrs. Eggers at a dance, and went to live with the Eggers about Christmas of 1943. The Eggers and he went to dances together, and he took Mrs. Eggers to dances about half a dozen times without Mr. Eggers. He paid $10.00 a week for room and board at their home and slept in an outside bedroom which was not a part of the house. [Rep. Tr. pp. 216, 222-225.]

On January 3, 1946, Deputy Sheriff Thompson of the County of Los Angeles went to the Eggers home and saw a Plymouth 4-Door black sedan, which he recognized as defendant's car for he had seen it many times, parked on the south side of the house with the trunk compartment open and observed defendant working in the vicinity of the back of the car as though he was possibly cleaning it out, or changing a tire, or something like that, at

least, defendant would go to the back end of the car and look in very casually. [Rep. Tr. pp. 385-389.] Mrs. Carmichael also saw the defendant on this morning at the back of his car with the tonneau up. [Rep. Tr. p. 177.] Officer Thompson knew defendant and his wife and he told defendant that he had come to talk to him about Dorothy being missing and that he wanted more facts about her physical appearance and description. He asked defendant when was the last time he had seen her. [Rep. Tr. pp. 386-389.] Defendant said he had seen her at approximately 9:00 a. m., December 29, 1945; that they had had a family argument over financial matters and she walked out the door at about 9:00 o'clock and he hasn't seen her since; that when she had not returned at 10:00 p. m., he became apprehensive and with his car he started out to find her; that he went to two ballrooms where he thought she might possibly have gone but didn't find her; that he drove around the rest of the night and after about seven or eight hours he went back home. [Rep. Tr. p. 390.] The officer asked defendant to describe her and defendant stated that she was five feet four inches in height, with dark brown hair, and no marks on her body; that her feet were all right, without bunions, corns or callouses; that she was wearing a mustard colored dress, tan stockings, a diamond engagement ring and a wedding ring. [Rep. Tr. pp. 391, 392.]

On January 4, 1946 defendant, using a fictitious name, sold for $10.00, to the Rosslyn Loan and Jewelry Company, located at 459 South Main Street in the City of Los Angeles, two rings, a yellow and white wedding set, approximately a 5-point diamond and three chips in the band. [Rep. Tr. pp. 498-502.] Defendant testified that his wife seldom wore the rings, that he found them in a

dresser drawer. and that he sold them because he thought they might be used against him. [Rep. Tr. p. 824.]

On January 16, 1946 Deputy Sheriff Packard of Los Angeles County went to defendant's home at about 8:00 a. m., after defendant had telephoned to him relative to the sale of defendant's car. [Rep. Tr. pp. 426, 427.] It was a 1940 Plymouth, black sedan. Defendant told him that the car wasn't any use to him and he was thinking of selling it to a dealer and that he would rather sell it to him if he was interested. [Rep. Tr. p. 428.] Officer Packard looked at the registration slip and the car was registered to Dorothy Eggers. They agreed upon a price of $800.00. [Rep. Tr. pp. 429, 431.] Officer Packard asked defendant what the deal was when the car was registered in the name of his wife who was missing, and defendant said they were splitting up, and had made arrangements to sell the car. [Rep. Tr. pp. 433, 434.] He asked defendant if he had the pink slip and defendant said that he did not have it and showed him a typewritten note signed by his wife saying that she had inadvertently burned the pink slip along with some other papers. [Rep. Tr. p. 434.] Defendant told Officer Packard that Mrs. Eggers was staying with her sister and was available. Officer Packard said that he would pick both of them up the next morning and go to the Department of Motor Vehicles in Pasadena and get another pink slip. Officer Packard gave defendant $800.00 in currency and received a bill of sale to the car from defendant. [Rep. Tr. pp. 435, 436.] The next morning defendant told Officer Packard that he (defendant) did not need his wife to go with him; that he could get the pink slip by himself because he had found a bill of sale and that Packard could pick up the pink slip at the station that night. [Rep.

Tr. pp. 437, 438.] Around noontime on January 17, 1946, after receiving information that defendant was at the Motor Vehicle Department and wanted to see him, Officer Packard went there and saw defendant with a woman he thought was defendant's wife but who was not introduced to him. Defendant asked him for the white slip which was not signed on the front or back. [Rep. Tr. pp. 439-441.] Officer Packard saw defendant sign the name "Dorothy Eggers" on the reverse side of the white slip, and take it to the clerk's window and then to the cashier's window. The sum of $9.20 was paid, Officer Packard paying one-half thereof. [Rep. Tr. pp. 442, 443.] The woman who was with defendant at the Motor Vehicle Department was his wife's niece, Marie. He asked her if she would go with him to sign the name "Dorothy Eggers" to some papers. She did not want to cause trouble and when they arrived there she practiced writing the name "Dorothy Eggers," following which defendant said, "Never mind, I will do it myself." [Rep. Tr. pp. 460, 461.] About two weeks after Mrs. Eggers had disappeared, defendant asked Leslie Loomis (roomer and boarder) where her private papers were. [Rep. Tr. p. 219.] After the car was sold and after defendant's arrest, Mr. Eggers' mother told Mr. Loomis where the pink slip was and he reached up and got it, and he stated that the handwriting on the slip was very similar to the handwriting of Dorothy Eggers. [Rep. Tr. p. 220.]

Mrs. Eggers had taken osteopathic treatments from Dr. Carmichael who had h[illegible]e in Temple City about two blocks from the Eggers r[illegible]ce. [Rep. Tr. pp. 157, 164, 165.] She had hemorrho[illegible] and pain in the upper back. She also had marked bunions on both big toes and he recommended that she see Dr. Hess for her bunions.

[Rep. Tr. pp. 158, 159.] She had drooping breasts, a scar above the right ankle, and was quite muscular. [Rep. Tr. pp. 160, 161.] He treated her several times at her home and she had him come there as a general rule when Mr. Eggers was not present and she told him that she would have to pay him without Mr. Eggers' knowledge. [Rep. Tr. pp. 169, 170.] Dr. Carmichael had also treated treated Marie and Lorraine professionally and the payment of the bills for the children was the same, that Mrs. Eggers did not want Mr. Eggers to know about it. [Rep. Tr. p. 171.] On a Monday night, around January 20th, Dr. Carmichael saw a body without a head and hands in a mortuary in San Bernardino which he recognized as that of Dorothy Eggers. [Rep. Tr. pp. 159, 160, 161.] A brother of deceased viewed the body and testified that in his best judgment it was the body of his sister. [Rep. Tr. p. 187.] Leslie Loomis saw the body and identified the body to his satisfaction as that of Dorothy Eggers. [Rep. Tr. p. 230.] The sewing on the blanket, which was wrapped around the body, was very similar to Mrs. Eggers' sewing, in the opinion of Mrs. Isabel Lee, sister-in-law of deceased. [Rep. Tr. pp. 202, 204.] Lorraine identified the blanket as one which looked like a blanket she had seen in the closet and once or twice on the bed. [Rep. Tr. pp. 254, 255.]

On January 22, 1946 Deputies Sheriff Achenbach and Hannon went to defendant's home and asked him if he had heard from Dorothy, and defendant said that he had not heard a thing from her; that perhaps she was in Arizona with a soldier boy friend who used to come to see her; that he went to San Bernardino and saw the body in the County Morgue underneath the Sheriff's Office in the Hall of Justice. The officers told defendant that he

was not telling the truth. They asked him about a .380 automatic gun he was trying to sell about a year ago, and defendant said that it belonged to his sister and he had returned it to her. The officers searched the house but did not find any automatic gun. They told defendant that they were going to take him with them. [Rep. Tr. pp. 479-481.] At the East Los Angeles Substation of the Sheriff's Office a statement was taken from defendant. [Rep. Tr. p. 482.] Defendant stated that his wife disappeared on the afternoon of the 29th at 2:00 p. m., that she was last seen walking down Rosemead [Rep. Tr. p. 484]; that the children last saw her in bed at 11:30 o'clock that night when they came home from a show; that when he came home her bed was mussed up; that he asked the children where Mama was and they stated that when they came home from the show at 10:30 o'clock she was asleep in bed and they didn't wake her up; that he arrived home at about 8:45 but didn't go into the house because he was mad at her and thought she was home and would start fighting again; that this had happened once before and he stayed away and cooled off; that he drove to Long Beach; that it was a foggy night and he didn't come back home until early morning of the 30th [Rep. Tr. p. 485]; that it was about 8:45 Sunday morning when he got home; that he went in his room and saw her bed mussed up and she wasn't there, so he went in and woke up the girls and asked them where Mama was and they said, "Isn't she in bed?"; that they jumped up and said, "Why, she was here in bed sleeping at 11:30 last night when we came from the show"; that he asked them if she hadn't told them about the argument they had and they said "No." [Rep. Tr. p. 486]; that his wife's mother called the next day and asked if Dorothy

was there and said it in such a peculiar way that he thought she knew where Dorothy was but wouldn't say; that he sold his Plymouth automobile last Thursday; that he made the missing person report on the 2nd of January at 5:00 o'clock as soon as he went to work [Rep. Tr. p. 487]; that he told Officer Wood that he was going to turn in a missing person report on his wife, but that she would be back and Officer Wood said, "Well, I guess she flew the coop"; that Officer Wood put the report in the file; that he (defendant) made a teletype and put it through the routine; that the next morning he read the story in the paper about the body in San Bernardino; that he went to see the body on the night of the 3rd of January [Rep. Tr. p. 488]; that he got on the bus and went to San Bernardino, arriving there about 7:00 or 7:30 o'clock [Rep. Tr. p. 489]; that he spoke to the man at the desk [Rep. Tr. p. 490]; that he told the man he was from the Sheriff's Office, Los Angeles, and showed the man his card; that he told the man that his wife's name was Dorothy and asked the man if he had received an all points broadcast and the man said that he did not see it; that he described his wife and the man said that the body could not be his wife if his wife was five feet four inches because the body with the head off was five feet one inch and that it stands to reason that the body was five feet eight inches or better with the head on; that he told the man about the scar on his wife's leg [Rep. Tr. p. 491]; that the man took him down stairs and he saw the body which looked like a woman and that it was not his wife [Rep. Tr. p. 493]; that both feet were on the body [Rep. Tr. p. 494]; that the body was of a slender woman and his wife was 42 years of age and had started to take on weight [Rep. Tr. p. 495]; that he called Leslie

from San Bernardino; that he arrived home at about 11:30 o'clock [Rep. Tr. p. 506]; that he talked to Leslie in the dining room [Rep. Tr. p. 507]; that he sold his car on January 17th for $800.00 to Dale Packard [Rep. Tr. p. 508]; that the car was registered in his wife's name and she had signed the pink slip [Rep. Tr. p. 509]; that they told the defendant he was not telling the truth and they wanted the truth from him; that the defendant said he went down stairs in the same building in which the Sheriff's Office was located and viewed the body [Rep. Tr. p. 511]; that he was not sure it was in the same building but guessed it was in another building; that he walked about two blocks [Rep. Tr. pp. 512, 513]; that he did not see any other bodies in this morgue [Rep. Tr. p. 516]; that he did not go to the morgue because the man said it was not the body of his wife after he had described her to the man; that he did go into the Sheriff's Office; that he said he went to the morgue because he should have gone there and looked at the body [Rep. Tr. p. 517]; that he did not shoot his wife; that he never hurt her in his life; that the body out there is not his wife [Rep. Tr. p. 518]; that he did not look at the body but would go out and look at her; that he did not haul the body of his wife in the back of his car and dump it out; that he needed his wife to rear his children [Rep. Tr. p. 519]; that he did not forge his wife's name to the application for a pink slip to the car [Rep. Tr. pp. 519, 520]; that she signed the pink slip before she left; that he did not pass his daughter off as Dorothy; that he did not sign them [Rep. Tr. p. 520]; that he did not clean out the back of the car before he sold it nor paint the back of the car; that there was no blood in the back of the car so far as he knew [Rep. Tr. p. 521]; that the

back of the car is just without a mat and he did not know where the mat was and did not wash out the back end of the car; that he didn't know anything about any blood in the back end of the car and that there was never any blood on his account there. [Rep. Tr. p. 522.]

On January 22nd, in the Hall of Justice, Captain Mahoney of the Temple substation of the Sheriff's Office [Rep. Tr. p. 121], asked defendant if he had come home and found a man in company with his wife and defendant said, "No, not that bad." [Rep. Tr. p. 42.] He told defendant that he had been seen cleaning out the back of his car on January 4th at his home and defendant stated that he was repairing a tire. He told defendant that they found blood in the back of the car and defendant stated that he didn't know how it got there. He told defendant that it was on the floor of the trunk compartment, and defendant said, "No, that was not blood, that is paint; I painted it." He talked to defendant about the blanket [People's Exhibit No. 3] and the little girl Lorraine was brought into the room by a woman deputy, and Lorraine said, "Daddy, you know that is our blanket, that it was on your bed." and defendant said, "When did you put it on my bed?" and she said, "When I made up the bed, I put it there." Captain Mahoney said to defendant, "How about it, Art, is that so?" and the defendant said, "She is a liar." [Rep. Tr. pp. 143, 144.]

On January 22nd, Sheriff Shay of San Bernardino County interviewed defendant in the Sheriff's Office of Los Angeles County. [Rep. Tr. pp. 40, 41.] He told defendant that he had gone to such extremes in trying to cover up and hide the identity of the body that he had overplayed his hand and it stuck out like a sore thumb. Defendant stated that he knew nothing about it and had

not harmed his wife [Rep. Tr. p. 45]; that she had disappeared on the 29th and was last seen going down Rosemead Avenue, and that there was nothing the matter with his wife's feet, she had perfect feet. [Rep. Tr. p. 46.] Sheriff Shay took defendant to San Bernardino and en route defendant said that he came home about 1:00 o'clock; that he and his wife had been having trouble; that he did not go in the house; that he got in the car, which was parked in the garage, and drove down to Long Beach, parked his car and stayed all night; that it was quite foggy that night and he returned home the following morning about a quarter to nine; that he went in the house and saw that his wife's bed was mussed up; that he woke up the children and asked where Mama was; that they told him that they had been to the show and got home about 11:00 o'clock; that Mother was asleep in bed and they went to bed and didn't know where she had gone. [Rep. Tr. pp. 47, 48.] The next morning Sheriff Shay again questioned defendant relative to marks or scars. Defendant described certain scars upon his wife's body but placed the scars on the side opposite from where they actually existed. Sheriff Shay explained to defendant that he wanted him to tell the truth, that if this was his wife, he wished him to at least be decent enough as a man to say so. They then went to Cramer's Mortuary and to the slab where the body was. [Rep. Tr. pp. 49, 50.] Sheriff Shay called defendant's attention to certain scars upon the body and asked him if those were the scars that he had mentioned to him, and defendant said they were. There was a faint scar on the left shin, apparently a vaccination scar on the left thigh, numerous small scars like those of boils on the left buttocks, and a faint scar on the right ankle. Sheriff Shay asked defendant if those

were his wife's feet and defendant said "Sheriff, it looks like Dorothy; I believe it is Dorothy." Sheriff Shay said to defendant, "If you were in a position, Arthur, would you claim this body for burial and assume the expenses of the burial fee?" and defendant said, "I would." Before getting out of the car upon returning to the Sheriff's Office at San Bernardino, Sheriff Shay said to defendant, "Arthur, you say you believe that is Dorothy. Are you sure that is Dorothy?" and defendant said, "Yes, I am sure that is my wife, Dorothy." [Rep. Tr. p. 51.] Sheriff Shay, at 5:25 p. m., on January 23rd, released defendant to Los Angeles officers. [Rep. Tr. p. 80.]

On January 24, 1946, Ray H. Pinker, Technical Director of the Scientific Crime Investigation Laboratory of the Los Angeles Police Department, went to defendant's home at 202 North Rosemead, Temple City, California. [Rep. Tr. pp. 616, 620.] He had examined the blanket, in which the body was wrapped [People's Exhibit 3], and found thereon blonde and grey human head hairs, a wide variety of textile fibres and threads, a small piece of botanical contamination and two shades of paint, one a pale or pastel green and the other a pale pink. [Rep. Tr. pp. 618, 619.] At defendant's home he found in the northwest bedroom that the walls and molding were painted with the same shade as the pink paint contamination which he found on the blanket. He also found that the hallway was painted with a pale or pastel green paint, having the same shade or tint as the paint he found contaminating the blanket. [Rep. Tr. pp. 620, 621.] In a tool shed or a summer house, which was screened in, he found a partly used can of Kemtone paint of the same shade and tint that he observed on the northwest bedroom wall. [Rep. Tr. p. 621.] The pink paint on the

blanket contained the same 14 elemental constituents as the paint on the wall and from the can. [Rep. Tr. p. 624.] He made an analysis from samples of the green paint which he took from the wall of the hallway with the green paint on the blanket and here again he found 14 elements to be present qualitatively in both samples [Rep. Tr. p. 628], and it was his opinion that the two paints were common in origin, because of the agreement qualitatively and quantitatively of the impurities, that the paint came from the same batch, that in checking this particular batch of paint or that of paint with the known Kemtone chart, he found that it matches the Midland Green, and is a homogeneous paint. He also secured a sample of botanical debris which he found on the sidewalk immediately outside the rear door. [Rep. Tr. p. 629.] They were berry leaf stems and he compared them with the botanical debris found on the blanket and found them to be the same. He also made some examination that day for blood. [Rep. Tr. p. 630.] He observed stained contamination on the floor underneath the wash basin in the bathroom [Rep. Tr. p. 632], a ruddy stain on the toilet bowl, and ruddy stains on the floor molding in the corner directly adjacent to the wash basin. [Rep. Tr. p. 633.] He returned to defendant's home on January 28th in company with Doctor Candela, who has made a study of blood chemistry more properly described as serology of the blood. [Rep. Tr. pp. 346, 347, 630.] Samples of stain were secured from the molding, wash basin, linoleum floor underneath the wash basin and on the wall directly above and approximately six inches from the end of the tub. Samples of reddish brown stain were removed from the floor of the garage. Benzidine tests were made on the premises in various localities, in addition to securing

samples for additional laboratory examination. [Rep. Tr. p. 633.] In the substation of the sheriff's office in Temple City, Doctor Candela examined defendant's Plymouth automobile. There were numerous blood stains in the trunk, one right near the edge where the lock is, just underneath the edge of the lid, and some blood stains on felt lining inside the compartment, the blood having soaked through the felt and onto the metal floor, making the felt stick at that point. [Rep. Tr. pp. 359, 360.] In the early part of January, 1946 Doctor Candela examined the torso found in San Bernardino County for the purpose of determining the blood grouping of the body and was able to find some blood remaining in the liver. [Rep. Tr. p. 351.] He typed the blood and found it to be Group "A", formerly known as Type 2. Blood on a rope he received from Mr. Russell of the Bureau of Indentification gave a definite Group "A" reaction. [Rep. Tr. pp. 352, 353.] The blood found underneath some oil spots on the floor of the garage was in Group "A", also the blood found in the trunk compartment of the car. [Rep. Tr. pp. 358, 359, 360.] The blood found in the bathroom had been washed and was very weak and not enough to group but enough to identify as human blood. [Rep. Tr. p. 356.] Mr. Pinker performed the test to determine whether the blood was human blood. [Rep. Tr. p. 378.] Blood on a tire iron found in the back end of the car, People's Exhibit 46, was Group or Type "A". [Rep. Tr. pp. 635, 636, 674, 675.]

On January 25, 1946, in the Inspector's office on the 10th floor of the Hall of Justice, a stenographic statement was taken from defendant by Mr. Barnes, Deputy District Attorney. [Rep. Tr. p. 682.] Defendant stated that he first found out that his wife was murdered when

he viewed her body last Thursday in the morgue at San Bernardino [Rep. Tr. p. 684]; that he told the press when asked questions concerning blood on some pants of his then in the house that they wouldn't find any blood because they hadn't been used, referring to his coveralls, that if blood was seen on them he would have washed them [Rep. Tr. p. 685]; that he also inferred to the press that when she had stayed away so long she had gone away with another man, "that she had flew the coop" and he didn't have any idea how it could have happened, but being a hitchhiker she might have gone along for the ride and he always had the idea that she would fight before she would submit; that the last time he saw her was two o'clock, Saturday, the 29th of December, 1945; that he was outside the house and saw her walking south on Rosemead toward the theater; that she was wearing a long dress [Rep. Tr. pp. 685, 686], black shoes, a small hat, and a coat over her arm; that she went out of the house in a hurry; that he was seated in the dining room and she preceded him out of the house; that he asked her where she was going and she said, "Never mind" and he heard the door bang [Rep. Tr. p. 687]; that they had been talking about Christmas presents; that she kept reproaching him for not giving Leslie, their boarder, a present and she called him a cheap skate; that she gave him the idea that she was mad because he hadn't given her enough money for Christmas [Rep. Tr. p. 688]; that when his wife left there was no one except himself in the house; that the children were out playing; that when his wife left he went back in the house; that he went to work about a quarter to five o'clock; that in the meantime the youngest girl came home [Rep. Tr. p. 689], and he told her that "Mamma has a mad on and I don't know where

she is"; that she has never before left him except to go to San Francisco to bury his brother when he died; that he worked until 12:30 that night, returned home but did not go in the house; that he was mad and didn't want to start the argument over again [Rep. Tr. p. 690]; that his wife would be waiting for him; that they had quarreled quite a bit; that without telling anyone he drove to Long Beach where he stayed until about 8:00 o'clock in the morning [Rep. Tr. p. 691] and got home at a quarter to nine on Sunday morning, December 30th [Rep. Tr. pp. 692, 693]; that the ride cooled him off and he went into the house and awakened the girls who said that when they came home the night before at 11:30 o'clock from the show, they opened mama's door, looked in and saw her asleep, but did not wake her up [Rep. Tr. p. 693]; that he did not look to see if his wife had taken anything with her; that she didn't leave any note; that he went to work on Sunday night, December 30th, and got home about one o'clock [Rep. Tr. p. 694]; that he did not drive his car after the morning of December 30th; that he sold the car to Dale Packard because he did not need it [Rep. Tr. p. 695]; that he came to the conclusion his wife was not coming back about January 14th or 15th, 1946; that if his wife came back, it was not his intention to patch things up and go on living with her; that he determined around the 13th or 14th, when she had stayed away a couple of weeks, that he would not stay around any longer; that before she left he had an idea she had had an affair with some man, but he never thought she would submit [Rep. Tr. p. 696]; that he thought she would always go out with a guy for the buggy ride; that he knew she had been riding with some fellow whose first name was Bob because she brought him to the house and

introduced him and she ran after him but he didn't know that in December, 1945, she had been communicating with or seeing Bob; that it was after she disappeared he told the girls, "I know you know where mamma is, you are hiding her out," and they said no, and he said, "Where is she?" and they said, "No, we don't know, that Bob Holloway came here twice the first part of December"; that he said, "She never told me about that. Where does he live?"; that they said on some ranch in Arizona; that Bob Holloway got out of the service a year and a half ago; that he did not have any other disagreement with his wife before she left and had no words with her over money or property; that the property is in both their names and there was nothing to argue about the property [Rep. Tr. p. 697]; that he had no idea she would leave him and thought she would come back for the kids' sake [Rep. Tr. p. 698]; that his wife signed the new application for a pink slip a day or two, he thought, before she left [Rep. Tr. p. 699]; that Marie went with him to get the car transferred to Packard; that he signed the white slip [Rep. Tr. p. 700]; that his wife had given him authority to sell the car; that he wrote it out on a typewriter [Rep. Tr. p. 701]; that his wife told him she had burned the pink slip; that she did not want to sign the pink slip but he did not force her to sign it [Rep. Tr. p. 702], but finally got her to sign it after arguing with her; that he thought whoever shot his wife and cut off her head and hands and threw her body over a cliff without chance of a decent burial premediated and planned the execution of this murder; that only a sadist or maniac would do that and if it was not done by a maniac, it was done by someone who had planned and premediated the crime; that he realized that if he did it that is the construction to be placed on the evidence [Rep. Tr. p. 704];

that he didn't think anyone would kill his wife without a motive for it, except a maniac and he was not a maniac [Rep. Tr. p. 705]; that he never owned a .380 automatic but did have such a gun in his possession about a year and a half ago which belonged to his brother; that the gun is now probably in San Francisco with his sister for his brother died [Rep. Tr. p. 706]; that his wife worked at Douglas in 1942 as a riveter for less than a month; that he imagined in defense plants the employees would be fingerprinted and the prints sent to the F. B. I. [Rep. Tr. p. 707], but his wife's legs were better identification than fingerprints; that he saw the headless, handless torso of the woman in San Bernardino the other day and was satisfied and positive that it was his wife [Rep. Tr. p. 708]; that he could not account for the blood in the back of his car; that he did not know his wife was shot in the bathroom of his home, but it could have been when he was not there, otherwise he would have heard the report [Rep. Tr. p. 715]; that Loomis (roomer and boarder) was home every single night except he was a little late on January 1st [Rep. Tr. p. 716]; that on December 29th, the day he said his wife left at 2:00 o'clock in the afternoon, Lorraine came home about 4:00 o'clock and he was home alone on that day between 2:00 and 4:00 o'clock [Rep. Tr. p. 717]; that Lorraine was home shortly before 2:00 o'clock and before he and his wife had the argument that Lorraine went to a neighbor's to play with her pal, Joey Perry [Rep. Tr. pp. 719, 720], and that he had a saw, but it disappeared before his wife left. [Rep. Tr. p. 718.]

On January 26, 1946 defense witnesses Robert Z. Jones, a retired deputy sheriff of Los Angeles County, who has known defendant for about eleven or twelve years,

and Attorney John C. Rotchford, who has known defendant for about seven years, visited the defendant in the county jail. [Rep. Tr. pp. 759, 760, 763, 764, 765, 766.]

Around 7:00 or 7:30 o'clock that evening, Sheriff Biscailuz of Los Angeles County and deputies took defendant to his home and then to Sheriff Shay's office in San Bernardino and with the latter they went to the high gear road for the purpose of searching for the head and hands of deceased. [Rep. Tr. pp. 53, 113, 116.] They stopped where the body was found and asked defendant if this was where he threw the body of his wife. Defendant said it looked like the place. They asked defendant how much further up the road it was where he claimed to have thrown the head and hands, and he said it was up the road about five or six miles where a rock retaining wall was around the edge of the road and the road wide enough so that a car can be completely turned around. This place was searched at the time the body was found. With lanterns or lights they conducted a further search that night without results, and the search was given up until the next day at 2:00 p. m., at which time defendant got out of the car and demonstrated how he had thrown the box containing the head and hands, stating that he had thrown it approximately 50 feet. This place had been thoroughly gone over. The searching party consisted of 350 to 400 men. [Rep. Tr. p. 55.] Sheriff Shay told defendant that he was lying, that if he had thrown the head there, they would have found it or some indication. Defendant then said he was lying, that he had not thrown it there, but had burned the head and hands in the incinerator in the rear of his yard. [Rep. Tr. p. 56.] Captain Mahoney of Temple Station told defendant that that was impossible because enough heat could not be generated

in that incinerator to burn those bones, that it takes a force draft nine hours in a crematory and then the bones of the head had to be broken up when they came out of the crematory. Defendant said, "Well, I got up the following morning and started a fire in there," with a cardboard box and some pieces of wood. Captain Mahoney told defendant again that it would be impossible, that he could not have gotten enough heat and that he wanted him to tell where the head and hands were, and defendant said, "Well, they must be up here then." [Rep. Tr. pp. 147, 148.]

On January 29, 1946, deputy sheriff Brown had a conversation with defendant in the county jail concerning a gun and a saw. He asked defendant if he would tell him where the gun and saw were and defendant said, "You know where Double Drive is? You go up Double Drive past the Ranger Station to a turn out." He gave defendant a pad of paper and a pencil and defendant wrote certain directions. [Rep. Tr. pp. 527-529.] After receiving these directions Brown went up Double Drive in the foothills of Arcadia to the first turn out above the Ranger Station, parked his car and went down the embankment about 20 or 21 feet in the brush and found a saw wrapped in paper secured by twine and further down he found a gun in a paper bag secured by twine. It was a .380 Colt automatic. He gave them to Ray Pinker of the Los Angeles Police Department. [Rep. Tr. pp. 530, 531.] Mr. Pinker found the saw to be contaminated with blood and fatty substances [Rep. Tr. p. 637], and found on the gun small chunks or deposits of fat, also human blood, tiny fragments of bone tissue and a rather large fragment of bone wedged between the clip and the frame of the gun and had to loosen the clip in order to extract this

bit of bone. [Rep. Tr. p. 639.] Firearms expert, James G. Layne, tested a bullet he fired from this gun and compared it with the bullets extracted from the body of deceased and stated as his opinion that the two bullets taken from the body were fired from this gun. [Rep. Tr. pp. 556-560.] In 1929 or 1930, deputy sheriff Carl G. Lindeman had traded this gun to defendant for a 9 mm. Luger automatic. [Rep. Tr. p. 422.]

Defendant testified that he loved his wife and home [Rep. Tr. pp. 833, 834]; that he had heard rumors or gossip concerning the infidelity of his wife but did not pay any attention to them; that he heard she had gone to dances and picked up men, but he trusted her and never paid any particular attention to it [Rep. Tr. p. 834]; that between Christmas, 1945 and New Year's, 1946 they had the worst fight they ever had, which occurred about 1:00 o'clock on a Sunday morning; that he had just gotten off work and was walking home and when he had reached the southeast corner of the garage, heard the front door slam and saw a tall, big fellow coming as from his (defendant's) house, walking hurriedly down Rosemead Boulevard; that he entered his house through the back door [Rep. Tr. p. 835], went into the front bedroom, turned on the lights and saw his wife standing without any clothes on; that she said something, he didn't know what it was, and he said, "Well, I am going to fix old Doc from ever coming back here again"; that he grabbed the gun out of the chiffonier; that in the meantime his wife had stepped into the hallway to intercept him; that he tried to get toward the front door and she struggled with him and grabbed his right hand and they wrestled; that his wife is quite a bit stronger than he is and they seesawed back toward the bathroom, he trying to shove

her away and she trying to pull him and they both fell in the bathroom, the gun going off, and he found himself sitting on the toilet seat [Rep. Tr. p. 836]; that he sat there crying and was scared; that he got in the car and while driving he heard somebody saying, "She is in back, she is in back"; that he found himself along the water-front east of Long Beach; that something seemed to say that she was in back and he went around and opened up the rear trunk compartment but nothing was there, so he thought it was a bad dream and drove back home and spoke to the children about Dorothy and said, "Well, she has gone away, then; [Rep. Tr. p. 837] she has gone away"; that the next day he saw something in the paper about a body being found at San Bernardino and he made a missing person report and requested an all points bulletin, knowing that San Bernardino would get a copy and if it was Dorothy they would identify her [Rep. Tr. p. 838]; that he could not definitely identify the man he saw hurrying down Rosemead Boulevard, but the man resembled Dr. Carmichael who lives near him; that he never told the deputies sheriff or District Attorney what he has just stated on the witness stand on the advice of his attorney [Rep. Tr. p. 840]; that he never had any intention or thought of killing his wife and sometimes thinks she is dead and at other times thinks that she is alive and laughing at his predicament; that he, at this time, does not know where Dorothy Eggers is and that the body he saw in San Bernardino was not that of Dorothy Eggers. [Rep. Tr. p. 841.]

On cross-examination defendant stated that he threw the gun and saw away because it just seemed to be natural to go to the mountains and throw them off [Rep. Tr. p. 857]; that he remembered one shot but there could have

been more and he never gave it a thought whether she was badly hurt because he was mad at her and thought she had been unfaithful to him that night, and he was angered more at the man than he was at her [Rep. Tr. pp. 864, 865]; that he did not hit her with the gun [Rep. Tr. p. 866]; that he didn't call a doctor because he didn't know whether she was hurt badly, or hurt at all, but had the idea she was shot and the next thing he knew he was in the car [Rep. Tr. p. 867]; that after seeing his wife lying in the bath tub, he believed he told Leslie Loomis to get help, but did not tell the girls because they did not get up [Rep. Tr. pp. 876, 877]; that when he returned home from Long Beach he slept for four or five hours and went into the bathroom and there was no body then in the bath tub, and he did not ask anyone as to where the body could have gone but thought the girls were hiding the body from him although he did not tell them that he had shot her because it seemed like a bad dream and the girls were very young and impressionable [Rep. Tr. pp. 879-881]; that when his wife was shot in the bathroom the report of the gun was as loud as it would be in a small room; that the bathroom door was not closed and the windows open, and that Marie slept next to the bathroom. [Rep. Tr. pp. 935, 936.]

He testified further on cross-examination that he never told Doctor McGinnis in the latter part of April or the first part of May, 1946, that his wife had fallen in the bathtub and the gun had gone off; that afterwards he could see that she was dead, and shortly thereafter he turned on the hot water to wash the blood away; that he went out and got the saw and sawed off her hands and head; that he wanted to keep his wife with him after she was shot but knew he could not keep her entire body

because of the odor and thought he would just keep her head and hands which he put in a cardboard box and kept on top of the chiffonier for a couple of days and that the head and hands disappeared. [Rep. Tr. pp. 885-887.]

He denied that he told Doctor Rowe of the Norwalk State Hospital that he drew hot water and used soap in removing the blood from the tub; that he later carried the body out in a blanket and put it in the trunk of his car. [Rep. Tr. pp. 954, 955.]

He testified that he did not recollect telling Doctor David Harold Fink that he saw a man leaving his home; that he picked up the gun to scare her lover; that he and his wife struggled for the gun and she was killed in the struggle and that he cut off her head and hands and identified the body by a scar of her bunion operation. [Rep. Tr. pp. 956, 957.]

On rebuttal Leslie Loomis testified that he did not hear any gun shots or see Mrs. Eggers lying shot in the bath tub, and that defendant did not ask him to get a doctor. [Rep. Tr. pp. 218, 983, 984.] Marie testified that she did not hear any gunshots in the house at all. [Rep. Tr. p. 465.] Lorraine testified that she did not hear any shots or hear any fighting or any noise like somebody dragging something around. [Rep. Tr. p. 253.]

Dr. Melvin J. Rowe, a psychiatrist appointed by the court to examine defendant, testified on rebuttal that he had a conversation with defendant on April 10, 1946, during which the defendant told him that he put the head and hands on top of the chiffonier, washed the blood away with hot water and soap, put the body in a blanket and then in the trunk of the car. [Rep. Tr. pp. 970, 971.]

Dr. James Edward McGinnis, a psychiatrist appointed by the court to examine defendant, testified on rebuttal that he had a conversation with defendant on April 22, 1946, during which the defendant told him that his wife had fallen in the bathtub and the gun went off; that afterwards he could see that she was dead; that he turned on the hot water to wash the blood off; that he got the saw and sawed off her head and hands; that he wanted to keep his wife with him for awhile after she had been shot but knew he could not keep the whole body because of the odor, and thought he would just keep the head and hands; that he put the head and hands in a cardboard box which he kept on top of the dresser or chiffonier for a couple of days; that the head and hands disappeared; that he thought Leslie Loomis took them; that his wife's body was wrapped in a blanket and he took the body out and dumped it; that the body was later found near San Bernardino, and that he knew the event would probably be discovered sooner or later, but not so quickly. [Rep. Tr. pp. 1001-1004.]

Dr. David H. Fink, a psychiatrist appointed by the court to examine defendant, testified on rebuttal that he had a conversation with defendant on April 30, 1946, during which the defendant told him that he saw a man leaving his home; that he picked up a gun to scare his wife's lover; that he and his wife struggled for the gun; that she was killed in the struggle; that he cut off her head and hands and that he identified her body by a scar from a bunion operation. [Rep. Tr. pp. 1012-1014.]

Argument.

Petitioner states that he was convicted of the murder of his wife through the use of an illegally obtained confession after several days of questioning; that he was subjected to a third degree in that he was kept in solitary confinement for about three hours and questioned by four or five people; that he was taken to San Bernardino on a cold night and on the way his sweater and shoes were taken from him and his teeth chattered; that he was placed in a small cell where a big searchlight shown in his eyes all night and he was without a mattress and blankets; that his permission to send messages to an attorney was refused; that on the morning of January 24, 1946, he was strapped to a lie detector machine for seven or eight hours in a closed room without ventilation and then placed in a high power tank; that he was exhausted from lack of sleep; that Officer Jones promised him that if he would confess he would be sent to a hospital at Mendocino, California; that he was again taken to the mountains in San Bernardino County and questioned about the disposal of the head and hands of his wife's body; that Sheriff Shay of San Bernardino County testified to a purported confession of petitioner that he had burned the head and hands in an incinerator, which supposed confession spelled the death and doom of petitioner.

What spelt the death and doom of petitioner was not that he said he had burned the head and hands in an incinerator. It was the evidence from which it could reasonably be inferred that he had wilfully and deliberately shot and killed his wife and then sawed off her head and hacked off her hands. (See *People v. Eggers,* 30 A. C. 681.) The officers had endeavored to find the head and

hands at the place where the body was found but were unsuccessful. The blood on the bath room floor established the place where the killing had occurred and the blood in the trunk compartment of petitioner's automobile showed where the body had been concealed and how it has been transported from petitioner's residence at Temple City, Los Angeles County, to a mountain ravine in San Bernardino County. The finding of the head and hands would merely have strengthened the testimony of the identifying witnesses that the deceased was Dorothy Eggers, petitioner's wife.

Officer Jones was a defense witness and not a witness for the prosecution. He testified that he is a retired deputy sheriff of Los Angeles County and has been retired since 1941; that he has known defendant for about eleven or twelve years and that on January 26, 1946, he visited defendant at the county jail. He was asked, "During that visit did you promise Arthur Eggers that if he confessed he would be sent to Mendocino?" The prosecution objected to the question and the objection was sustained. The witness testified to no confession or statement made to him by defendant. [Rep. Tr. pp. 764-766.] With this witness at the time of said visit was attorney John C. Rotchford, who was called as a defense witness. He testified that he and Mr. Jones had a conversation with defendant. He was then asked the following question, "During that conversation was the subject of Eggers making a confession discussed?" An objection to the question by the prosecution was sustained. The witness was then asked, "Did you hear anyone advise Mr. Eggers to confess?" An objection to the question by the prosecution was sustained. That was the extent of the testimony of this witness. The defendant testified that at this conver-

sation Jones told him that if he confessed he would be sent to Mendocino [Rep. Tr. p. 806]; that at the spot where the body was found the officers said that the head and hands could not have been thrown out there; that he suggested it might be up at the turn-off, so they went up there and searched; that the officers said it could not have been here and they asked him to tell them what he had done with the head and hands and he said that they could have been burned in his incinerator so far as he knew; that they said he could not burn anything like that in his incinerator and that he was trying to keep his end of the bargain because he wanted to go to Mendocino. [Rep. Tr. pp. 820, 821.] If defendant made any confession to Jones or Rotchford it was not placed in evidence and therefore the verdict could not have been predicated on any statement defendant made to either of these defense witnesses, or on anything they may have said to him.

As to petitioner being placed in solitary confinement for about three hours and questioned by four or five people, etc., he testified that he was arrested in Temple City and taken to the East Los Angeles Substation, which he guessed was about 14 or 15 miles from Temple City, and was kept there about three hours, he believed; that Mr. Hannon was with him all the time; that he was then taken to the office of the Sheriff of Los Angeles County, Sheriff Biscailuz; that Sheriff Shay (of San Bernardino County) was there; that there were four or five people talking to him and a lot of photographers there; that the sheriff said he was convinced that he (defendant) had killed his wife and he was sorry because he knew his father; that a lot of people said a lot of things and he didn't have a chance to say anything [Rep. Tr. p. 777]; that he was in Biscailuz' office for about an hour and was then taken to

another room and questioned, grilled, examined, and interrogated for about six or seven hours, until about midnight, and was then taken to San Bernardino County jail; that at the time of his arrest he had on a sweater, shoes, pants and a shirt; that after he got in the San Bernardino Sheriff's car his sweater and shoes were taken away from him; that somebody said they needed them as evidence [Rep. Tr. p. 778]; that this was while they were enroute to San Bernardino; that it was a cold night and he suffered from cold that night and knew that his teeth were chattering [Rep. Tr. p. 779]; that after arriving at the court house in San Bernardino he never again saw his sweater or shoes; that the next day he was given a pair of shoes that did not fit him and which he wore during the rest of the week; that during the ride to San Bernardino he told Sheriff Shay that he didn't kill his wife and did not know anything about the mutilation [Rep. Tr. p. 780]; that they arrived in San Bernardino at about 2:00 o'clock; that he was booked and placed in a cell he could just barely turn around in, no mattress or blankets, and there was a great big searchlight right over his eyes all night; that he was not permitted to send any messages and was told he should talk to the Sheriff; that he couldn't get hold of the Sheriff [Rep. Tr. p. 781]; that the Sheriff was not there at that time; that he was kept in this cell from 2:00 a. m. to 11:00 a. m. the same morning; that he was then taken by Sheriff Shay and a large group of deputies in several cars to a spot in the mountains where they said the body had been found [Rep. Tr. p. 782]; that a photograph was taken of him and the Sheriff and deputies Mogel and Stone [Defendant's Ex. "A"]; that he (defendant) was in his shirt sleeves and wearing the tight-fitting shoes; that they stayed there about an hour and at least 50 pic-

tures were taken [Rep. Tr. p. 784]; that he was then taken back to the county jail in San Bernardino where he stayed about an hour or two and was then taken to Kremer's Mortuary on Mt. Vernon Avenue [Rep. Tr. p. 785]; that he saw the body and said, "I am afraid it might be Dorothy's" [Rep. Tr. p. 787]; that he was there for about 20 minutes and then they went back to the county jail in San Bernardino and that night, after being in this cell for 7 or 8 hours, he was returned to the Los Angeles county jail by Officers Tex Hannon and his partner, and he believed a newspaper man was along, and was asked during the trip about the head and hands, and he (defendant) said he would like to find them. [Rep. Tr. pp. 788, 789.]

Sheriff Shay of San Bernardino County testified on cross-examination by defendant that he first saw defendant on January 22nd in Sheriff Biscailuz' office; that he booked defendant at about 2:00 a. m., January 23rd, at San Bernardino; that he left for San Bernardino with defendant at about midnight; that there was a heater in the car underneath the front seat; that after booking the defendant at 2:00 a. m. he saw him at approximately 10:00 o'clock at which time they went to the morgue and in the afternoon they went to the high gear road where a picture was taken of defendant in his shirt sleeves [Rep. Tr. pp. 71-79]; that he had not given any orders to hold defendant incommunicado; and that he did not know whether defendant requested the right to send out messages from the San Bernardino County Jail. [Rep. Tr. pp. 94, 95.] On

redirect examination he testified that defendant did not complain of being cold or hungry or sleepy; that defendant was in the automobile practically all of the time and that sandwiches and coffee were served to defendant. [Rep. Tr. pp. 96-99.]

It is significant to note that during the trips above related petitioner confessed to nothing, so therefore, his claimed abuse of his constitutional rights amounts to nothing more than objections to being arrested, confined and interrogated relative to the death of his wife.

Petitioner states in his petition that on the morning of January 24, 1946, he was strapped to a lie detector machine for seven or eight hours in a closed room without ventilation and then placed in the high power tank.

Ray H. Pinker, technical director of the scientific crime investigation laboratory of the Los Angeles Police Department [Rep. Tr. p. 616] testified for the prosecution on rebuttal that on January 25, 1946, the defendant was in his (witness') laboratory in connection with a lie detector test; that at the request of the prosecution he has brought with him into court portions of the so-called lie detector machine that are attached to the body; that the first attachment consists of a clamp device, having a sponge in contact with the palmar surface of the left hand, and a sponge in contact with the dorsal surface of the left hand; that the second attachment is a pneumograph tube, which is placed around the chest; that the third attachment is an ordinary pressure cuff, as used by physicians to measure blood pressure, and is blown up and contains air only during the course of the polygraph run, which runs last a period of from one to two minutes; that the pressure is released after the run of the polygraph; that defendant was

not tied up; that there were no other attachments affixed to the defendant, except those identical attachments that are on "you" (meaning deputy district attorney) at the present time; that the contrivance on the left hand often slips off; that the contrivance are the electrodes which are utilized to measure the electro-derma effects; that defendant did not on any occasion complain in any respect about anything; that defendant did not tell him that he did not want to take the test, but on the contrary, he asked defendant if he would take the lie detector test and defendant said he would; that defendant was seated in a straight back chair with arms on it for his forearms, the arm on the right side of the chair being wide and long, so that the entire forearm could rest comfortably on it, something on the general fashion of a dairy lunch chair, but not as wide; that defendant was brought to the laboratory between 9:30 and 10:00 a. m. and he began questioning defendant at approximately 11:00 a. m. and talked with him for about an hour and a half before affixing the attachments; that he explained the operation of the machine to defendant, the purpose of the attachments, and various things the attachments measured, various psychological and phsysiological responses, and that the test was completed at approximately 2:00 p. m. [Rep. Tr. pp. 974-979.]

Mr. Pinker gave no testimony as to what he learned from the lie detector test. A photograph was taken of defendant sitting in the chair of the lie detector machine by a newspaper photographer who had asked defendant for his permission to take it, and defendant consented to pose for it. This was after the completion of the test. The photograph was marked Defendant's Exhibit "D." [Rep. Tr. pp. 979-981.] Defendant testified that after he had taken the test Mr. Pinker told the newspaper men

that he (defendant) must be a nut because the machine would work on everybody but nuts. [Rep. Tr. p. 795.] Mr. Pinker on cross-examination denied making such statement. [Rep. Tr. p. 982.]

Thus, the force and effect of petitioner's argument relative to the lie detector test is nil. He neither confessed nor made any incriminating statement. This is established by defendant's own statement just above related.

Defendant testified that after taking the lie detector test he was returned to the high power tank in the county jail; that while in the county jail he requested permission to send telegrams and gave a trusty 25¢ therefor; that the telegram was to Attorney James A. Starritt; that the trusty returned the 25¢ to him and stated that he could not send out the telegram; that it was about January 30th when he was permitted to send out a telegram. [Rep. Tr. pp. 796, 797.]

From the record it appears that the "high power tank" consists of a series of barred cells; that a passageway surrounds it and there is just normal lighting in the room of not over 100 Watt bulbs, and that in the center of the passageway one light has a reflector over it, reflecting the light directly towards the floor. [Rep. Tr. pp. 994-996.]

As to defendant being unable to send a telegram, a witness for the defense, Jack Hite, testified that he was convicted of burglary and while serving time in the county jail, he acted as a trusty; that on January 22, 1946, Mr. Eggers requested him to send a telegram; that Mr. Eggers wrote a telegram addressed to James Starritt and gave him 25¢ because all telegrams are paid for before they are sent; that all telegrams are checked by the sergeant and that the telegram was not sent out and he refunded

the 25¢ to Mr. Eggers; that on January 29th, Mr. Eggers gave him another telegram and this one went out; that there were only two telegrams that Mr. Eggers requested him to send; that he did not know to whom the latter telegram was addressed; and that he was relying solely on his memory as to dates; however, he did make a written note of the matter in case he was ever asked if the telegram did or did not go out; that he did not check the name in the second telegram and the only one he was interested in was the first one, on the 22nd. [Rep. Tr. pp. 728-735.]

Defendant testified on cross-examination that before talking with the lawyer of his own choice, Mr. James Starritt, on January 29th, he had talked with the public defender on January 25th, but not in regard to the present case; that it was relative to the grand theft case, the sale of the car for $800.00 to Dale Packard, and that he was in the Municipal Court on January 25th and again on January 28th when a motion was made to substitute Mr. Rotchford in the place and stead of the public defender. [Rep. Tr. pp. 842-844.] It is to be recalled that defendant talked with Attorney Rotchford and retired Deputy Sheriff Jones on January 26th. Therefore, the matter of petitioner being denied permission to send messages to an attorney does not merit serious consideration.

Defendant testified that after talking with Attorney Rotchford and Mr. Jones at about 6:00 o'clock in the evening of January 26th, they went to the chief jailer's office and remained there for a couple of hours; that he then went in an automobile with Sheriff Biscailuz and Deputies Roche and Brown to San Bernardino; that it was a cold night and he was dressed fairly warm that

night, that some one had loaned him an overcoat. He then related the search for the head and hands hereinbefore stated. [Rep. Tr. pp. 811-814.] Thus, his own testimony belies his contention that he suffered from cold and his teeth chattered on this trip. As we have heretofore pointed out it was in the afternoon of January 23rd, that he was in his shirt sleeves and was so photographed.

As to being beyond exhaustion at the time a statement was taken from him by Deputy District Attorney Barnes on January 25th, because of lack of sleep, defendant testified that he had not slept for several nights but during the day he sometimes succeeded to get a little sleep. [Rep. Tr. pp. 802, 803.]

We have hereinbefore pointed out that defendant was in the Municipal Court that day answering to the charge of grand theft of $800.00 from Dale Packard and conversed with the public defender. The said statement was taken of defendant at 5:05 o'clock in the afternoon of that day. [Rep. Tr. p. 675.] On cross-examination at the trial, defendant was asked if during a conversation the following question was put to him, " 'You haven't been questioned over long periods of time without sleep, or anything of that kind?' and did you answer, 'No, decidedly, no'?" The defendant answered, "I believe I did say 'decidedly no', it sounds like it." [Rep. Tr. p. 851.] He was asked if the following question was put to him, " 'No one has mistreated you or in any wise abused you?' and did you answer, 'No'?" The defendant answered, "I believe I did, yes." [Rep. Tr. p. 850.]

In view of defendant's testimony, as above related and the fact that he made no confession or incriminating statement in the interview with Deputy District Attorney

Barnes, which is set forth in our Statement of Facts but to the contrary denied knowing that his wife had been shot in the bathroom of their home, his contention that he was exhausted because of lack of sleep lacks merit. This becomes more apparent when his testimony in defense of the charge set forth in the indictment is considered, namely, that his wife was accidently shot in the bathroom of their home while they were struggling.

Conclusion.

We see no need to discuss the authorities cited by petitioner because the evidence does not support his contentions that he was convicted through the use of an illegally obtained confession and that he was denied the right of counsel. Up to the time petitioner took the witness stand proof was only circumstantial that he had killed his wife. When he testified about the killing, then the identity of the killer became known by direct evidence and all that was left for the jury to decide was whether the killing was accidental or wilful, deliberate and premeditated. In deciding this matter the fact that the body was without head and hands became a matter of grave importance to the jury. Defendant, if he knew, never disclosed to the officers where the head and hands could be found and they have never been found. He testified on cross-examination that he did not cut off the head and hands but left her in the bathtub [Rep. Tr. p. 946]; that he threw away the saw and gun around the 4th of January, after he had made the missing person report, because it looked like somebody was trying to frame him, and the gun being there too it would look like somebody would think it had been used. [Rep. Tr. p. 948.] He denied telling Dr. Rowe (who was one of the psychiatrists appointed by the

court to examine defendant as to his sanity) that he put the head and hands on top of the chiffonier and that most of the blood was in the tub and he drew hot water and used soap. [Rep. Tr. p. 954.] Dr. Rowe, on rebuttal, testified that he examined defendant on April 10, 1946, at which time the defendant told him that he put the head and hands on top of the chiffonier, washed the blood away with hot water and soap and put the body in a blanket and then in the trunk of his car. [Rep. Tr. pp. 970, 971.]

The arrest of defendant was on January 22, 1946. His statement to Dr. Rowe, if true, was made nearly three months later. Defendant was arraigned in court on the murder charge on February 5, 1946. [Clk. Tr. p. 40.] The officers had completed their investigation of the crime in January. Defendant makes no contention, and none may well be made, that any third degree methods were used upon him by the three psychiatrists appointed by the court to examine him as to his sanity. The other two psychiatrists, Doctors McGinnis and Fink, gave testimony on rebuttal similar to that related by Dr. Rowe. [Rep. Tr. pp. 1001-1004, 1012-1014.]

Upon the record and for the reasons hereinabove stated, we sincerely believe that the writ prayed for herein should be denied.

Respectfully submitted,

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